

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of SEIFOULLAH LOTFI,
Deceased, a/k/a SAM LOTFI.

JOHN J. MCQUILLAN, personal representative of
the Estate,

UNPUBLISHED
January 3, 2003

Petitioner-Appellant/Cross-
Appellee,

v

YWCA OF BAY COUNTY, ATTORNEY
GENERAL, and TRINITY EPISCOPAL
CHURCH,

No. 230364
Bay Probate Court
LC No. 99-041710-SE

Respondents-Appellees,

and

HASTINGS COLLEGE, KNOX COLLEGE, and
BILLY GRAHAM EVANGELICAL
FOUNDATION,

Respondents-Appellees/Cross-
Appellants.

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Petitioner appeals by right from the probate court's order granting summary disposition under MCR 2.116(C)(10) for respondents YWCA of Bay County (hereinafter YWCA) and Trinity Episcopal Church (hereinafter Trinity). We reverse and remand.

The decedent, Seifoullah (Sam) Lotfi, was born in northern Iran in 1913. While serving in the Royal Iranian Air Force, Lotfi traveled to England to study aeronautical engineering. Lotfi apparently inherited some money upon the death of his father. Lotfi either deposited or invested this money in England, where it remained throughout Lotfi's life. At the time of Lotfi's death,

the funds in England were worth approximately \$1.7 million. Lotfi came to the United States in 1948, later becoming an American citizen. After becoming ill while overseas in the fall of 1998, Lotfi began drafting his will. Lotfi used the services of three attorneys during this process. The last attorney, William Allsopp, drafted the will and the codicil that are at the heart of this appeal.

Lotfi's last will and testament was executed on March 2, 1999. Paragraph three of the will reads as follows:

I give, devise and bequeath all the rest, residue and remainder of my estate, in equal shares, to the following three entities, to do with as they wish.

- a. 1/3 to the Bay City Y.W.C.A. . . . ,
- b. 1/3 to the Trinity Episcopal Church of Bay City, Michigan,
- c. 1/3 to the Bay Area Community Foundation.

The codicil in issue was also executed on March 2, 1999. It was handwritten by Allsopp, and reads as follows:

This is the first codicil to my last will and testament. Before division of my bequests, of Paragraph Three, I direct the following distribution

A) My funds and investments in England shall be given for humanitarian purposes in my homeland of Iran, as directed by my personal representative, MOSEN ASADI.

B) My personal representatives may provide as they agree up to 20% of the rest for educational benefits as I have said to Knox College of Toronto, and Hastings College of Nebraska.[¹]

C) Also to Evangelistic Foundation of Billy Graham up to 20% of the remainder.[²]

After Lotfi's death, appellant (his successor personal representative)³ attempted to probate the codicil in Bay Probate Court. As interested parties, the YWCA and Trinity moved to

¹ According to Lotfi's obituary, he studied theology "at Knox College of Toronto, Ontario, Canada and then he attended Hastings College of Nebraska and was awarded a Masters Degree in Theology."

² There is no dispute that the "Evangelistic Foundation of Billy Graham" is the same organization as the "Billy Graham Evangelical Foundation" (as the name appears in the caption of this opinion), and the "Billy Graham Evangelistic Association," (as the name appears in cross-appellants' brief on appeal).

³ Richard Cole, Conrad Ekkens, and Mosen Asadi were named in the will as co-Personal Representatives of the estate. Along with Allsopp, all three resigned after first filing a petition for commencement of independent proceedings in probate court. After accepting the resignations, the court converted the proceedings to supervised administration and named
(continued...)

deny admission of the codicil. Following a hearing in December 1999, the probate court entered an order, which provided in pertinent part:

IT IS HEREBY ORDERED that Personal Representative John McQuillan is authorized to act on behalf of unspecified “humanitarian” concerns regarding decedent’s homeland of Iran, without the necessity of naming or serving a specific entity as “interested party” until further order of the Court. The Personal Representative shall keep the court and above named counsel advised of the results of his efforts to discover the appropriate entities, if any, which are eligible and authorized by the U.S. government to receive humanitarian bequests regarding Iran. The Personal Representative also has general authority to act as proponent of the Codicil and participate in discovery matters, until further order if this Court.

Subsequently, the YWCA and Trinity filed their motion for summary disposition, arguing that the codicil should not be admitted under a variety of theories. The court concluded that summary disposition should be granted on the basis that the codicil “was void as to the intent of the testator regarding the naming of a beneficiary, and further that the document could not be construed as a charitable trust due to vagueness and ambiguous language,^[4] and that the instructions in paragraphs B and C were ambiguous”

Petitioner first argues that the court erred in granting summary disposition to the YWCA and Trinity because paragraph A of the codicil clearly manifested a charitable intent. Alternatively, petitioner argues that the court should have applied the cy pres doctrine, so that Lotfi’s charitable intention could be carried out. We agree with the former argument. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff’s claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

We review the court’s findings for clear error. MCR 2.613(C). “A finding is clear error when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed.” *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994).

(...continued)

appellant as successor personal representative.

⁴ This part of the court’s analysis relates to paragraph A of the codicil.

The overriding goal guiding every step of judicial interpretation of testamentary instruments is to give effect to the intent of the testator. *In re Norwood Estate*, 178 Mich App 345, 347; 443 NW2d 798 (1989). In determining the testator's intent, we turn first to the documents themselves.

Where there is no ambiguity, that intention is to be gleaned from the four corners of the Instrument. A patent ambiguity exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language. A latent ambiguity exists where the language and its meaning is clear, but some extrinsic fact creates the possibility of more than one meaning. [*In re Woodworth Trust*, 196 Mich App 326, 327; 492 NW2d 818 (1992).]

"Humanitarian" is defined as "1. having concern for or helping to improve the welfare and happiness of people. 2. pertaining to the saving of human lives or to the alleviation of suffering . . . 3. pertaining to ethical or theological humanitarianism." *Random House Webster's College Dictionary* (1997), p 634. Although a humanitarian purpose may be charitable under this definition, it is not necessarily charitable. Therefore, we agree with the court that because the term "humanitarian" is obscure, the codicil is patently ambiguous. "[T]he presence of an ambiguity requires the court to look outside the four corners of the will in order to carry out the testator's intent." *In re Estate of Elwen*, 144 Mich App 423, 426; 375 NW2d 738 (1985). Looking to the extrinsic evidence in the record, it seems clear to us that Lotfi had a charitable intent regarding the gift to his homeland. Asadi's deposition testimony establishes that Lotfi intended that the English assets be earmarked for "helping his hometown" in Iran. According to Asadi, Lotfi spoke to him about using these assets to buy needed medical equipment, "or to help the educational organization in" Lotfi's hometown. Ekkens confirms in his deposition that Lotfi wanted the English "assets to go to charities . . . in his country of Iran." According to Ekkens, he came by this knowledge during a discussion with Lotfi, Allsopp, Cole, and Asadi on March 2, 1999. Ekkens further stated that he and Asadi discussed the idea that the money would be used for education or medical purposes. Intending to gift property to better educational and medical opportunities is in keeping with the general purposes of charitable giving. As our Supreme Court observed long ago in *Scarney v Clarke*, 282 Mich 56; 275 NW 765 (1937):

"A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." [*Id.* at 63, quoting *Jackson v Philips*, 96 Mass 539, 539 (1867).]

Additionally, we believe it is a mistake to read paragraph A out of the context of paragraphs B and C. Both paragraphs B and C specifically identify Knox College, Hastings College, and the Evangelistic Foundation of Billy Graham as beneficiaries. These gifts are clearly charitable in nature. *Scarney, supra* at 63. Thus, under the codicil and the will, the vast bulk of Lotfi's property is given for charitable purposes. See *In re Rood Estate*, 41 Mich App 405, 423; 200 NW2d 728 (1972). Indeed, other than providing for the payment of his debts,

including burial expenses and the expenses of administering his estate, all of Lotfi's property has been designated to go to various charitable concerns.

Accordingly, we conclude that the probate court erred in finding that no charitable intent could be ascertained. We believe that the evidence clearly establishes "that 'some charitable purpose' exists." *Id.* at 413. Additionally, we believe that the parties adequately demonstrated that a court appointed trustee could release the English assets to an approved organization, e.g., an international aid organization, for distribution to Iranian educational and medical charities in Lotfi's hometown. This satisfies the federal prohibition against direct devises to countries with which we have ceased diplomatic relations, like the Islamic Republic of Iran. See 36 USC 300102(4), 300105(a)(4); 31 CFR 560.204 *et seq.* Therefore, the lack of a specific declaration of trust, beneficiaries, trustee duties, or method of distribution did not make the trust impossible or impractical to carry out. MCL 554.351; *Rood, supra* at 420.

Cross-appellants argue that the probate court also erred in excluding the entire codicil without explaining why paragraphs B and C should be struck. We agree. Like paragraph A, paragraphs B and C of the codicil are patently ambiguous. *In re Woodworth, supra* at 327. For example, it is unclear what "the rest" in paragraph B identifies. Presumably, there are no other assets in England other than those identified in paragraph A. If "the rest" refers to the rest of Lotfi's entire estate, it is unclear whether the intent in paragraph B is that both colleges receive up to twenty percent of these assets, or that the combined total would equal up to twenty percent. If this ambiguity is resolved, it is unclear under paragraph C whether Lotfi intended that the Evangelistic Foundation of Billy Graham also receive up to a twenty percent share of the rest of the estate after the Iranian distribution, or that he intended that the foundation receive up to twenty percent of the remainder after the distributions under paragraphs A and B are removed.

The record establishes that the main point of contention in the motion for summary disposition was paragraph A of the codicil. The comments that the court made on the record all go to this issue. Indeed, the transcript indicates that the court was going to adjourn without addressing paragraphs B and C before the successor personal representative queried the court about these two paragraphs:

Successor Personal Representative: . . . Is it your conclusion that the entire codicil is invalid—

Court: Yes.

Successor Personal Representative: --or just that paragraph a?

Court: The entire codicil.

We believe the probate court should look anew at the question of whether extrinsic evidence can clear up the patent ambiguities in paragraphs B and C of the codicil, including whether further evidence need be presented on the matter.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra